

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SONIA TINEO,
Plaintiff

v.

NANCY A. BERRYHILL,
Acting Commissioner
of Social Security,
Defendant

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No. 3:18cv768

(Judge Munley)

(Magistrate Judge Carlson)

MEMORANDUM

Before the court for disposition is Magistrate Judge Martin C. Carlson's report and recommendation, which proposes affirming the Social Security Commissioner's decision to deny Plaintiff Sonia Tineo (hereinafter "plaintiff") social security benefits given the plaintiff's failure to litigate this case. The matter is fully briefed and ripe for disposition.

Background

On February 26, 2018, the plaintiff filed an appeal seeking to reverse the Administrative Law Judge's decision that denied her social security benefits. The plaintiff claims that she became entitled to receive social security benefits because she suffers from the following disabilities: A.D.H.D. and chronic anemia. (Doc. 1). The commissioner denied the plaintiff's application, a decision disqualifying the plaintiff from receiving social security benefits. (Id.) The plaintiff

subsequently requested a hearing before an Administrative Law Judge where the Commissioner's decision was affirmed. (Id.) Plaintiff then appealed to the Appeals Council, who also affirmed the Commissioner's decision. (Id.) The plaintiff initiated the instant action by filing suit in the United States District Court for the Eastern District Court of New York. (Doc. 6). This case was transferred to the Middle District of Pennsylvania on April 9, 2018. (Doc. 11). Magistrate Judge Martin C. Carlson was assigned to handle all preliminary matters in this case. (Id.)

On June 1, 2018, the defendant filed her answer to the plaintiff's complaint. (Docs. 14 and 15). From there, the plaintiff had forty-five days to file a brief containing a statement of the case, statement of errors, argument, and conclusion. (L.R. 83.40.4). Under the local rules of the court, the plaintiff was required to file a brief in support of her appeal within forty-five days, on or before July 16, 2018. (Doc. 16). The forty-five day deadline passed, however, with no response by the plaintiff.

Accordingly, on August 1, 2018, Magistrate Judge Carlson ordered the plaintiff to file her brief on or before August 28, 2018. (Doc. 12). The plaintiff

was placed on notice that a failure to comply with this direction could result in dismissal of her appeal. (Id.) This deadline also passed without response.¹

On August 31, 2018, Magistrate Judge Carlson recommended that the court enter judgment in favor of the Commissioner given the plaintiff's failure to prosecute. (Id.) The plaintiff had until September 14, 2018, to object to the report and recommendation. (Id.) This deadline passed again with no action from the plaintiff.

On September 17, 2018, we adopted Magistrate Judge Carlson's report and recommendation and closed the case. (Doc. 19). On September 24, 2018, however, we received a letter from the plaintiff indicating that she never received a copy of the report and recommendation. (Doc. 20). Because the plaintiff is *pro se*, we afforded her leniency and allowed her an additional fourteen days to file objections. (Doc. 25). The plaintiff responded with documents, which we construe to be her objections, and we reopened the case, bringing this case to its current posture.

Legal Standard

In disposing of objections to a magistrate judge's report and recommendation, the district court must make a *de novo* determination of those

¹ We note that on August 27, 2018, Plaintiff submitted to the court a CD-ROM that contained a copy of the social security transcript. The court did not construe this as a brief in support of her appeal.

portions of the report against which objections are made. 28 U.S.C. § 636(b)(1)(c); see also Sullivan v. Cuyler, 723 F.2d 1077, 1085 (3d Cir. 1983). The court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. Henderson v. Carlson, 812 F.2d 874, 877 (3d Cir. 1987). The district court judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. Id. In deciding whether to adopt the report and recommendation, we must determine if a review of the record evidences plain error or manifest injustice. FED. R. CIV. P. 72(b) 1983 Advisory Committee Notes.

Discussion

As discussed above, Magistrate Judge Carlson recommends that the Commissioner's decision be affirmed and the plaintiff's appeal be denied. The magistrate judge concluded that under the rules of this court and Federal Rule of Civil Procedure Rule 41(b), the case should be dismissed for the plaintiff's failure to litigate.² The magistrate judge also concluded that the appeal would fail on the merits.

As previously stated, the plaintiff has objected to the magistrate judge's report and recommendation. (Doc. 20). Her objections, however, fail to address

² Federal Rule of Civil Procedure Rule 41(b) governs involuntary dismissals, stating that if a plaintiff fails to prosecute or to comply with the rules of procedure or a court order, a defendant may move to dismiss the action.

the conclusions and recommendations of the magistrate judge. Rather, her objections make claims that she suffers from depression, memory loss, attention deficit hyperactivity disorder, hemorrhoids, constipation, fatigue, dizziness, soreness in the face, and back pain. While we are sympathetic to the plaintiff's ailments, these assertions do not justify the plaintiff's failure to litigate i.e., filing a brief in support of her position. We will therefore apply the standard of review for when no objections are filed.

When no objections are filed, in deciding whether to adopt the report and recommendation, we must determine if a review of the record evidences plain error or manifest injustice. FED. R. CIV. P. 72(b) 1983 Advisory Committee Notes. After a careful review, we find that no clear error nor manifest injustice precludes this court from adopting the magistrate judge's report and recommendation.

Conclusion

After a careful review, we will adopt the report and recommendation. An appropriate order follows.

Date: October 31, 2018

BY THE COURT:

s/ James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court